

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CATHERINE B.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5046-SKV

ORDER REVERSING THE
COMMISSIONER'S DECISION

Plaintiff seeks review of the denial of her applications for Supplemental Security Income and Disability Insurance Benefits. Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for a finding of disability.

BACKGROUND

Plaintiff was born in 1959, has a GED, and has worked as a mail-order sales representative, retail salesperson, and Goodwill production associate. AR 437-38, 476-82.

Plaintiff was last gainfully employed in July 2017. AR 437.

In February 2018, Plaintiff applied for benefits, alleging disability as of December 31, 2015. AR 387-97. Plaintiff's applications were denied initially and on reconsideration, and

1 Plaintiff requested a hearing. AR 237-40, 244-59. After the ALJ conducted a hearing in October
2 2019 (AR 45-97), the ALJ issued a decision finding Plaintiff not disabled. AR 204-29.

3 The Appeals Council granted Plaintiff's request for review, and remanded to the ALJ for
4 further administrative proceedings. AR 232-34. The ALJ held another hearing in July 2021 (AR
5 98-133), and subsequently issued a decision finding Plaintiff not disabled. AR 15-35.

6 THE ALJ'S DECISION

7 Utilizing the five-step disability evaluation process,¹ the ALJ found:

8 **Step one:** Plaintiff has not engaged in substantial gainful activity since the alleged onset
9 date.

10 **Step two:** Plaintiff has the following severe impairments: degenerative disc disease of
11 the lumbar spine, degenerative joint disease, right hip bursitis, and major depressive
12 disorder.

13 **Step three:** These impairments do not meet or equal the requirements of a listed
14 impairment.²

15 **Residual Functional Capacity (RFC):** Plaintiff can perform sedentary work with
16 additional limitations: she cannot climb ladders, ropes, or scaffolds, but can occasionally
17 climb ramps and stairs. She cannot crawl, but can occasionally balance, stoop, kneel, and
18 crouch. She should only occasionally use foot controls bilaterally. She can tolerate
19 occasional exposure to vibration and extremely cold temperatures. She can understand,
20 remember, and apply detailed, but not complex, instructions. She cannot work in a fast-
21 paced production-type environment. She would need to frequently use a cane to
22 ambulate.

23 **Step four:** Plaintiff can perform past relevant work.

AR 15-35.

The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the
Commissioner's final decision. AR 1-6. Plaintiff appealed the final decision of the
Commissioner to this Court. Dkt. 4.

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, App. 1.

LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on harmful legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to “the record as a whole to determine whether the error alters the outcome of the case.” *Id.*

Substantial evidence is “more than a mere scintilla. It means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

DISCUSSION

The parties agree that the ALJ’s decision contains reversible error, but disagree as to the proper remedy for the error. Plaintiff requests that the Court remand for a finding of disability because, *inter alia*, evidence found persuasive by the ALJ, but not fully accounted for in the RFC

1 assessment, compels a finding of disability.³ The Commissioner contends that the record
2 contains ambiguities that must be resolved by the ALJ on remand, and suggests that the record
3 also raises serious doubt as to whether Plaintiff is disabled, and thus requests a remand for
4 further proceedings.

5 Before remanding a case for a finding of disability, three requirements must be met.
6 First, the ALJ must have ““failed to provide legally sufficient reasons for rejecting evidence,
7 whether claimant testimony or medical opinion.”” *Brown-Hunter v. Colvin*, 806 F.3d 487, 495
8 (9th Cir. 2015) (quoting *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014)). Second, the
9 Court must conclude ““the record has been fully developed and further administrative
10 proceedings would serve no useful purpose.”” *Id.* In so doing, the Court considers the existence
11 of ““outstanding issues”” that must be resolved before a disability determination can be made.
12 *Id.* (quoting *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1105 (9th Cir. 2014)).
13 Third, the Court must conclude that, ““if the improperly discredited evidence were credited as
14 true, the ALJ would be required to find the claimant disabled on remand.”” *Id.* (quoting
15 *Garrison*, 759 F.3d at 1021). And even if all three requirements are satisfied, the Court retains
16 flexibility in determining the proper remedy. *Id.* The Court may remand for further proceedings
17 ““when the record as a whole creates serious doubt as to whether the claimant is, in fact, disabled
18 within the meaning of the Social Security Act.”” *Id.*

19 In this case, the parties agree that the first requirement is met. *See* Dkt. 11 at 3. The
20 Commissioner contends that the second requirement — no outstanding issues remain that must
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22 ³ Plaintiff argues that the case should be remanded for a finding of disability on additional grounds as
23 well, but the Court need not address those because the basis discussed by the Court is sufficient to support
the Court’s conclusion. *See PDK Labs. Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (“[I]f it is not
necessary to decide more, it is necessary not to decide more.”) (Roberts, J., concurring in part and
concurring in the judgment).

1 be resolved on remand — has not been met because the record contains some evidence that
2 undermines or fails to corroborate Plaintiff’s allegations, namely evidence of improvement with
3 treatment and unremarkable clinical findings. Dkt. 11 at 3. But the ALJ pointed to that same
4 evidence in discounting Plaintiff’s testimony (AR 27-28), and the Commissioner did not
5 explicitly defend the ALJ’s assessment of Plaintiff’s testimony in her motion to remand, even
6 though it was challenged by Plaintiff. Dkt. 10 at 13-16. An ALJ’s proper discounting of a
7 claimant’s allegations may indicate that the record contains ambiguities that should be resolved
8 on remand, but that is not the situation presented to the Court. *See Dominguez v. Colvin*, 808
9 F.3d 403, 409 (9th Cir. 2015) (“The ALJ’s well-supported credibility concerns raise additional
10 factual issues that require resolution.”). Given the Commissioner’s failure to defend the ALJ’s
11 reliance on this evidence in the current decision, the Commissioner has not adequately explained
12 why the ALJ should have yet another opportunity to rely on that evidence in further proceedings.

13 The Commissioner also contends that there are conflicts in the record pertaining to the
14 extent of Plaintiff’s physical and mental limitations that would preclude a finding of disability.
15 Dkt. 11 at 3. Specifically, the Commissioner contends that the opinion of an examining
16 psychologist regarding Plaintiff’s mental limitations conflicts with the opinion of a treating nurse
17 practitioner addressing Plaintiff’s physical limitations. Dkt. 11 at 3. These opinions do not
18 address the same conditions or limitations, and thus do not directly conflict. *Compare* AR 1205-
19 09 *with* AR 2370-71. That the Plaintiff does not challenge the ALJ’s assessment of the State
20 agency medical consultants, as the Commissioner emphasizes (Dkt. 11 at 3), does not suggest the
21 existence of a conflict in the record because the ALJ himself found that Plaintiff was more
22 limited than the State agency medical opinions described her to be. *See* AR 31-32. For these
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1 reasons, the Commissioner has not identified conflicts in the record demonstrating that further
2 proceedings would be necessary.

3 The Court goes on to find the third requirement also satisfied because evidence that the
4 ALJ purported to credit undermines the ALJ's step-four finding and instead compels a finding of
5 disability. The ALJ found that the State agency psychological opinions were persuasive, yet did
6 not include a crucial limitation to 1-3-step instructions that a State agency consultant imposed.
7 *See* AR 149. The ALJ mentioned the restriction to 1-3-step instructions in his summary of the
8 opinion (AR 32), but then failed to include it in the RFC assessment (AR 25) and did not, as
9 posited by the Commissioner (Dkt. 11 at 4-5), reasonably translate the opinion into RFC
10 restrictions consistent with the opinion. Instead, the ALJ simply omitted, without explanation,
11 the portion of the State agency psychological opinion that conflicted with the requirements of
12 Plaintiff's past work as described by two vocational experts (VEs). *See* AR 32, 95, 131-32. The
13 ALJ also acknowledged at the hearing that if Plaintiff were limited to unskilled work (which the
14 VEs testified would be implied by a restriction to 1-3-step instructions), she would be found
15 disabled under the Medical-Vocational Guidelines. *See* AR 124.

16 Accordingly, the Court disagrees with the Commissioner that the State agency
17 psychological opinions "lend further support to the ALJ's non-disability determination." Dkt. 11
18 at 4. Instead, the ALJ's crediting of the State agency psychological opinions directly undercuts
19 the ALJ's ultimate non-disability conclusion because the ALJ's own finding that the State
20 agency opinions are persuasive compels a finding of disability. The Court finds that Plaintiff has
21 shown that the three requirements for a finding of disability have been satisfied.

22 Although the Commissioner contends that the record raises serious doubt as to whether
23 Plaintiff is disabled (Dkt. 11 at 4), the Court disagrees. The Commissioner points to evidence

1 related to Plaintiff's use of pain medication and activities, but neither of these examples raise
2 serious doubt about Plaintiff's disability. That Plaintiff on one occasion in July 2018 reported
3 that she did not take pain medication every day (AR 1212) is not a reason to discount her
4 allegations, particularly because the Commissioner has not cited any evidence that Plaintiff was
5 instructed to take her pain medication every day, or that she claimed to require it every day. *See,*
6 *e.g.*, AR 66-67, 112 (Plaintiff's hearing testimony that her pain vacillated).

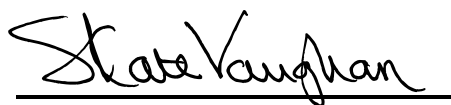
7 Furthermore, the ALJ's list of Plaintiff's activities referenced by the Commissioner (Dkt.
8 11 at 4) was found by the Appeals Council to be an inadequate basis to discount Plaintiff's
9 testimony or medical opinions (AR 242), and yet the ALJ repeatedly listed those same activities
10 again in the current decision. *See* AR 29, 30, 31, 32. The Court finds that the activities listed do
11 not necessarily contradict an allegation of disability. Thus, the Court does not find that these
12 examples provided by the Commissioner raise serious doubts as to whether Plaintiff is disabled,
13 in light of the ALJ's crediting of an opinion that compels a finding of disability.

14 Because all three requirements for a finding of disability have been satisfied, and the
15 Court does not have serious doubt as to whether Plaintiff is disabled, a remand for a finding of
16 disability is appropriate.

17 CONCLUSION

18 For the reasons set forth above, the Commissioner's final decision is **REVERSED** and
19 this case is **REMANDED** for a finding of disability.

20 Dated this 15th day of July, 2022.

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S. KATE VAUGHAN
United States Magistrate Judge